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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,684	11/05/2003	Jacob J. Thomas	0310-2	1122

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,684

Applicant(s)

THOMAS ET AL.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/05/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy (2,200,956) in view of Moore (1,652,789), further in view of Wilton Book of Candy (Wilton Enterprises, 1981), Candy (Good Cook Techniques and Recipes, Time Life, 1981) or Wilton Book of Candy in view of Moore and Candy, further in view of Kennedy, or Moore in view of Kennedy, further in view of Candy and Wilton Book of Candy.

In regard to claim 1, Kennedy discloses an edible ice cream cone having a top and a closed bottom. Claim 1 differs from Kennedy in the recitation that the composition is transparent and/or translucent edible glass. Edible glass is another name for hard or rock candy. Kennedy discloses the ice cream cone is made from a different candy—i.e. chocolate. Thus, applicants are not the first to make ice cream cones out of material that are not baked. As evidenced by both Moore and Wilton Book of Candy, it is well established in the art to provide ice cream holders from non-chocolate candy compositions. The Wilton Book of Candy employs conventional hard candy/edible glass, which is applicants' composition. This composition is notoriously well known as an edible transparent candy composition. Candy Cook Techniques and Recipes is further evidence of the conventionality of transparent hard candy. To modify Kennedy and substitute one conventional candy for another conventional candy; i.e. to substitute edible glass for the chocolate, for its art recognized and applicants' intended function, which is to

provide a transparent ice cream cone/holder, is therefore seen to have been obvious in view of the art taken as a whole. In regard to claim 2, candy discloses the conventionality of sucrose (i.e. sugar) and glucose. In regard to claims 6-9, Wilton Book of Candy and Candy disclose it is notoriously well known to provide hard candy with color and flavor. Whether the color is uniformly distributed or not is seen to have been an obvious matter of choice. Both uniform and non-uniform coloring is well known in the art as evidenced by the uniformly colored bowl and lollipops of Wilton Book of Candy and the non-uniformly colored striated candies of Candy. In regard to claim 10, Kennedy discloses a candy ice cream cone with a substantially circular top.

Employing the Wilton Book of Candy as the primary reference, since the Wilton Book of Candy discloses a transparent, high boiled composition of hard candy useful as a holder for ice cream and since it was known to provide other candy ice cream holders including ones shaped as a cone as evidenced by Kennedy, to modify the Wilton Book for Candy and provide the ice cream holder with a conventional ice cream cone shape would therefore have been obvious.

Employing Moore as the primary reference, since Moore teaches candy ice cream holders and Kennedy teaches candy ice cream holder shapes and since Wilton Book of Candy teaches a transparent high boiled candy shape for use as an ice cream holder, to modify Moore and provide the conventional cone shape and the conventional transparent composition for its art recognized and applicants' intended function would have been obvious.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Mentink et al (5,314,701), Inside R & D

(volume 20, No. 39, September 25, 1991) and Int'l Journal of Food Sciences and Nutrition (volume 48, No. 5, page 329-337).

Claims 3-5 differ from the combination in the particular conventional sweeteners used to make the composition. The particular conventional sweeteners one chooses to use is seen to have been obvious result effective variable. The art taken as a whole teach these sweeteners including maltitol, isomalt, etc. have also been uses in candy as evidenced by of Mentink et al, Inside R & D and Int'l Journal of Food Sciences.

Claims 15-17, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Ito (5,284,672) and Benaud (1,015,400).

In regard to claim 15, Kennedy discloses a preformed sheet of candy (e.g. Fig. 4) that is intended to be formed into a cone. Wilton Book of Candy not only teaches to provide a transparent high boiled composition for use as an ice cream container, it also teaches forming a precursor for the container in the form of a flat, disc, sheet. Wilton Book of Candy teaches the precursor can harden and be re-softened for shipping. To modify Kennedy and provide a transparent sheet of high boiled composition would therefore have been obvious for the reasons given above. In regard to the recitation that the precursor for the cone is disk shaped, the particular shape of the sheet is seen to have been an obvious matter of design. Kennedy discloses one can employ a sector shaped sheet member to form a cone but as evidenced by Ito and Benaud, one can also employ a circular disk shaped sheet material as a precursor to form a cone. In regard to claims 16 and 17, the particular diameter of the disk is seen to have been an obvious function of the size of the edible ice cream cone desired.

In regard to claim 11, which recites a method of making an edible, transparent ice cream cone, this method is seen to have been obvious in view of the art taken as a whole for the reasons given above. That is, the art taken as a whole teaches it was conventional to prepare a candy composition, form the composition into a precursor sheet form and while the sheet is still pliable, form the sheet into a conical shape. As fully detailed above, these are the teachings of Kennedy. The remainder of the art taken as a whole teaches one can employ high boiled compositions of sucrose and glucose to form transparent edible glass and shape a precursor circular disk of the composition while still pliable around a mold/mandrel. Ito and Benaud are relied on to teach that it would have been obvious to employ a conical mold/mandrel to create a conical edible container. As detailed above, one could equally employ Wilton Book of Candy to teach preparing the high boiled sugar composition, forming a circular disk and wrapping the disk around a mandrel that imparts the final desired container shape and modify Wilton Book of Candy to employ a conical shape as taught by the art taken as a whole. Similarly for using Moore as the primary reference. In regard to claim 14, which additionally adds that the disk is cooled and then reheated to make it pliable, Wilton Book of Candy clearly teaches that high boiled disk shaped compositions can be allowed to cool and then be reheated to make it pliable as is done with the ice cream dish.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Hoffmann et al (4,744,997), Ogata et al (JP 2-207746), Sakuma (JP 60-130342) and Morimoto et al (JP 61-185154).

The art taken as a whole as applied to claim 1 discloses it would have been obvious to form a high boiled sucrose/glucose composition and feed it to a mold to form a transparent edible

glass in the shape of an ice cream cone for the reasons given above. Claim 12 differs from the combination in the use of an extruder. The combination of references disclose essentially batch operations to form the molded product. However, as evidenced by Hoffmann et al, Ogata et al, Sakuma and Morimoto, it was well established to form candy compositions in a continuous operation using an extruder and to modify the combination and employ a continuous operation employing an extruder for its art recognized and applicants' intended function would therefore have been obvious.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 12 above, and further in view of Wilton Your Book 1994, Disney's Family Cook Book (5/96), Product Alert (11/12/90, page 85), HFD (11/12/90, page 85), Cincinnati Post(12/16/92,p.1D) and Oregonian(12/10/96,p.FD01).

Claim 13 differs from the combination in that the sheet is broken up and reheated and extruded. The specification is unclear why this is done. Perhaps it is to make the candy at one location and ship it to another location for processing into the cone shape. In any case, as evidenced by of Wilton, Disney's Family Cook Book Product Alert and HFD, it is well established to form a candy composition, given it shape in small discrete form, and then use these individual pieces in a re-melting and molding process. Cincinnati Post and Oregonian employ candy pieces that have been previously molded and which are then reduced into smaller pieces, heated to melting and reshaped to form a glassy shape. Whether one forms the composition into a sheet and breaks the sheet up into small pieces or cast the composition directly into small pieces is seen to have been an obvious result effective variable.

The remainder of the references cited on the USPTO 892 form are cited as pertinent art.

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
November 4, 2004

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
11/8/04